

### **REMARKS/ARGUMENTS**

The Applicants have carefully considered this application in connection with the Office Action delivered October 7, 2009 and the Notice of Non-Compliant Amendment delivered on January 5, 2010, and respectfully request reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicants originally submitted Claims 1-15 in the application. Claims 6 and 12-15 were cancelled pursuant to a first restriction requirement. Claims 7-11 were withdrawn pursuant to a second restriction requirement. Claims 19-20 were withdrawn by the Office in the April 16 Action pursuant to a third restriction requirement. In previous responses, Claims 1, 3-5, 7-11, 19 and 20 were amended, Claim 2 was cancelled, Claims 16-21 were added, Claims 22 and 23 were added and simultaneously withdrawn and claims 24 -26 were added. Presently, the Applicants amend Claims 1 and 24-26 without prejudice or disclaimer. To correct a typographical error the Applicants also amend the written description as provided herewith. Accordingly, Claims 1, 3-5 and 16-18, 21 and 24-26 are currently subject to examination.

The Applicants filed the Claims and amendments included herewith on December 30, 2009. The Office delivered a Notice of Non-Compliant Amendment on January 5, 2010. The Office asserts that the status identifier "Withdrawn—Previously Presented" is not a proper status identifier.

The Applicants respectfully submit that the status identifier "Withdrawn—Previously Presented" is a proper status identifier. An Office memorandum titled "Acceptance of Certain Non-Compliant Amendments Under 37 CFR 1.212(C)", dated June 6, 2005 includes a Table of acceptable alternatives to status identifiers set forth in 37 CFR 1.121(c). Acceptable alternatives to

“Withdrawn” include “Withdrawn—Currently Amended”. Immediately following the Table, the memorandum states

Additionally, the Office may also accept other variations of the status identifiers provided in 37 CFR 1.121(c) when the examiner determines that the status identifiers used by the applicant clearly and accurately designates [sic] the status of the claim.

(Emphasis added.) Because each of the claims designated “Withdrawn—Previously Presented” in the December 30 response had been previously amended, the status identifier “Withdrawn—Previously Presented” clearly and accurately designates the status of these claims. Insofar as a previously amended non-withdrawn claim is properly designated “Previously Presented” to alert the Office, the Examiner and the Applicant that the claim has been previously amended, “Withdrawn—Previously Presented” accomplishes this for a withdrawn claim. Thus, “Withdrawn—Previously Presented” is more clear and accurate than simply designating the withdrawn claim that has been previously amended as “Withdrawn”. Moreover, the Applicants designated the subject claims as “Withdrawn—Previously Presented” in a response filed on July 14, 2009 without objection from the Office. This lack of objection is evidence the previous Legal Instruments Examiner found the designated “Withdrawn—Previously Presented” to be acceptable.

Nevertheless, to expediently advance prosecution, the Applicants herein resubmit the claims as amended in the December 30 response with all instances of “Withdrawn—Previously Presented” replaced by the status identifier “Withdrawn”, while noting that Claims 7-11, 22 and 23 have been amended in previous responses. The claims and marked amendments are otherwise identical to those submitted in the December 30 response.

## **I. Allowed Subject Matter**

The Applicants acknowledge with appreciation that the Office has rejoined Claims 19 and 20, and has allowed Claims 1, 3-5 and 16-21.

## **II. Applicant-Initiated Interview**

The Examiner and the Applicants' undersigned representative discussed various aspects of the case in a telephone conversation on December 22, 2009. Among the topics discussed was the rejection of Claim 24. The scope of the discussion included the interrelationship of the elements of Claim 24 with the elements of Claim 1, and support for various elements of these claims. Relevant support discussed includes the following, where the reference in parentheses refers to the paragraph of the published application corresponding to the cited page and line of the description as filed.

- 1) Page 9, lines 21-22 (§ [0031]) for a liquid in a closed cell being the electrolyte liquid.
- 2) Page 10, lines 7-9 (§ [0032]) for a fluid including gases and liquids that could be disposed within cells of the feature pattern.
- 3) FIG. 9C and 12C, and associated text appearing at page 11, lines 5-20 (§ [0033]), with specific attention to lines 14-16 for the electrolyte liquid being controlled within cells of the feature pattern to reversibly change a degree of penetration of the feature pattern by the electrolyte liquid.

The Examiner indicated that based on this discussion it is likely that the rejection of Claim 24 for lack of utility will be withdrawn. The Applicants' representative conveys his sincere appreciation to the Examiner for the courtesies extended during this discussion.

### **III. Rejection of Claim 24 under 35 U.S.C. § 101**

The Office has rejected Claim 24 under 35 U.S.C. § 101 on the basis that the disclosed invention is inoperative and therefore lacks utility. As described above, the Examiner has indicated that after further review it is likely that the rejection of Claim 24 for lack of utility will be withdrawn. Accordingly, the Applicants respectfully request that the Office withdraw the rejection of this claim under 35 U.S.C. § 101 and issue a notice of allowance for this claim.

### **IV. Rejection of Claims 24-26 under 35 U.S.C. § 112, second paragraph**

The Office rejects claims 24-26 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regards as the invention. Each of claims 24-26 inadvertently claims a method. The Applicants herein amend Claims 24-26 to be directed to a battery, thereby obviating the rejection. Accordingly, the Applicants respectfully request that the Office withdraw the rejection of these claims under 35 U.S.C. § 112, second paragraph issue a notice of allowance for these claims.

**V. Conclusion**

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1, 3-5 and 16-21 and 24-26.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, P.C.

A handwritten signature in black ink, appearing to read "Andrew R. Ralston", with a stylized flourish at the end.

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Dated: February 4, 2010

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